

The Revenues of Associations and Foundations in Romania

by Anca Giurgiu

Legal Forms

According to the provisions of Government Ordinance 26/2000 in Romania, non-profit organisations may be set up as associations, foundations or federations.

- An association is a subject of law created by three or more persons who establish a patrimony through material contribution, knowledge, or work in order to accomplish activities of general interest, of local community interest or, if such be the case, of their personal not-for-profit interest.
- A foundation is a subject of law created by one or more persons who establish by will, whether inter vivos or after death, a patrimony permanently and irrevocably in order to achieve an objective of general interest or, if such be the case, of community interest.
- A federation is a subject of law formed by two or more associations or foundations. The associations and foundations that form the federation keep their own legal status, including their own patrimony. This article will not deal separately with the revenues of federations as all references to associations and foundations also apply to federations.

Legal Basis for Revenues

Government Ordinance 26/2000 has a special chapter referring to the revenues of associations and foundations. Article 46 stipulates that:

1. Revenues of associations or federations come from:
 - a) membership dues;
 - b) interest payments and dividends resulting from [financial] placements of the available sums, according to the law;
 - c) dividends from commercial companies established by associations or foundations;
 - d) revenues from direct economic activities;
 - e) donations, sponsorships or legacies;
 - f) revenues from the central government budget and/or local government budgets;
 - g) other revenues stipulated by law.
2. Revenues of foundations are those stipulated under paragraph 1, letters b) through g).

Membership Dues

Membership dues are paid by members, be they individuals or legal persons. The amount of an association's membership dues is established by its general assembly. As a general rule, this amount is not mentioned in the association's statutes as it could vary over the years and would

mean that the statute is changed too often. If at all, this amount is mentioned in the internal rules and regulations of the association, or only in the internal decisions of the General Assembly. The amount should be the same for all the members of the association that have the same rights and obligations.

Interest and Dividends

Interest is obtained as the result of a credit operation (e.g. a loan offered to another entity), an account with interest at a fixed term, or state treasury bonds. Dividends are earned from ownership of shares in a private company founded by an association or foundation. This is the classic form of participating in the creation and expansion of a company's capital. Besides this, there is the possibility of being the beneficiary of a transfer of shares of that company.

Revenues from Indirect Economic Activities

When referring to sources of income, the law refers to two kinds of economic activities: direct and indirect. Direct economic activities are those that an association or foundation conducts without setting up a private company (see next section), while indirect activities are those that are performed through private companies founded by associations and foundations. The law specifies that dividends obtained from the activities carried out by such a company, if not reinvested in the company, have to be used for fulfilling the purpose of the association or foundation that set it up.

The difference between companies established by associations and foundations and those mentioned in the previous section is that in the first case the associations or foundations are the only shareholders or have a controlling interest in their companies.

Revenues from Direct Economic Activities

As mentioned above, the law permits associations and foundations to undertake direct economic activities in order to obtain the necessary funds to accomplish their goals. Compared to the previous legislation, namely Law 21/1924 that governed associations and foundations before G.O. 26/2000, foundations can also conduct economic activities.

The law establishes the condition that has to be fulfilled by the economic activity, i.e. to have an accessory character and to have a strong connection with the purpose of the association or foundation. The reason for establishing such a condition is clear and is meant to avoid the possibility of establishing companies under the guise of associations or foundations in order to avoid commercial legislation. An association or foundation that undertakes economic activities does not cease to be a non-profit organisation and does not have to register in the Commercial Register.

With regard to the accounts of associations and foundations, legislation regarding commercial activities is applicable.

Revenues from Donations, Sponsorships, and Legacies

A donation is a form of contract that requires an authentic notary act, otherwise the donation is null and void. One explanation for this requirement is that a donation represents a “contract with gratuitous title” whereby the donor offers something and does not expect anything in exchange. The law requires a contract in order to ensure that the donor realises its importance and consequences and acts only according to his will. Given the cumbersome procedure required for donations, associations and foundations do not consider them the best way of obtaining funds, with the high taxes payable to the notary public being the biggest impediment.

Sponsorship is regulated by a variety of normative acts. The legislation on sponsorship has been continuously amended since being enacted, but no major changes have occurred. Discussions have focused on the percentage of the deduction of the sponsorship from taxable income. Currently this percentage is 5% for sponsorship in a large number of public interest areas (specified by law). An association or foundation can receive sponsorship from individuals and legal persons, be they companies or other non-profit organisations.

Legacy is a legal act that can be carried out only by a natural person and comes into effect from the moment of that person’s death.

Revenues from Government Budgets

Funds from the central government budget and/or local government budgets can be obtained by associations and foundations on the basis of the Law on Local Public Finances. The best known Romanian legislative act on government grants to the Third Sector is Law 34/1998 on the granting of subsidies to Romanian associations and foundations with legal personality that establish and administer social assistance units.

Other Revenues

The category of “other revenues” as stipulated by the law represents the great majority of the revenue sources available to associations and foundations when acting as legal persons in general and not in their special capacity as non-profit organisations. Examples of such revenues are the funds obtained through renting out real estate and selling certain goods.

Anca Giurgiu is an attorney-at-law at the Civil Society Development Foundation in Bucharest.
E-mail: ancag@fdsc.ro, Web: www.fdsc.ro